

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL ALLEN BERNARD,

Plaintiff,

v.

Case No. 1:07-CV-459

HELEN V. BRINKMAN, et al.,

HON. GORDON J. QUIST

Defendant.

/

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court has before it the report and recommendation dated June 29, 2007, in which Magistrate Judge Brenneman recommended that Plaintiff's complaint be dismissed pursuant to 28 U.S.C. § 1915A(b) for failure to state a claim. The magistrate judge concluded that Plaintiff fails to state a claim against the Kent County Correctional Facility, the Kent County Sheriff's Department, and the Kent County Prosecutor's Office because those Defendants are not legal entities capable of being sued. He also found that Plaintiff's claims for damages against the prosecutor and assistant prosecutor are barred by quasi-judicial immunity. Finally, he concluded that Plaintiff's constitutional claims are essentially a challenge to his prior conviction and that should be brought as a petition for habeas corpus rather than an action under 42 U.S.C. § 1983. The magistrate judge also concluded that Plaintiff's claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), to the extent that he seeks injunctive, declaratory, and monetary relief for alleged constitutional violations. After conducting a *de novo* review of the report and recommendation, the Court concludes that the report and recommendation should be adopted by the Court.

Plaintiff did not file an objection, but rather filed a document that has been docketed as a motion to dismiss, in which he states that he “would like to withdraw this action at this time.” (docket no. 6.) In light of the fact that Plaintiff does not present any specific objection to the report and recommendation, the Court finds no reason to reject it. Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued June 29, 2007 (docket no. 5) is **APPROVED AND ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that Plaintiff's complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915A(b) for failure to state a claim. This Court finds no good-faith basis for an appeal of this matter within 28 U.S.C. § 1915(a)(3).

This dismissal counts as a strike for purposes of 28 U.S.C. § 1915(g).

This case is **concluded**.

Dated: August 8, 2007

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE